

Appl. No. 09/739,857

**REMARKS**

Applicants request further examination and reconsideration of the application in view of the amendments and the following remarks. Claims 1-4, 6, 7, 17-18, 20-30, 32-33, 35-36, 38-41, 43, 44, 46-57 and new claims 58-59 are pending in this application.

**1. Status of the Claims**

Attorney for Applicants wishes to convey appreciation and gratitude to Examiner Pratt for the courtesies extended in a telephone conversation on February 11, 2003. Examiner Pratt noted the discrepancy in Paper No. 8 which omitted cancelled claims 5, 8, 13, 16, 19, 31, 34, 37, 42 and 45. Examiner Pratt further indicated that these cancelled claims would be entered and annotated in the next Office Action.

As a result of the present amendment, claims 9-12 and 14-15 have been cancelled. Claims 1, 17, 35, 54 and 56 have been amended. New claims 58 and 59 have been added. Support for the amendments and new claims can be found in the original patent application at page 6, lines 23-26 and page 9, line 19 through page 10, line 15.

**2. Double Patenting**

Claims 1-16 were provisionally rejected for obviousness-type double patenting over claims 77-93 and 98-121 of copending application no. 09/739,450 (Attorney Docket No. 40002-10387) and the claims of application no. 09/487,036 (Attorney Docket No. 40002-10075). Regarding application no. 09/739,450, only claims 85-93, 104-110 and 113-121 are pending and have been allowed. These claims are directed to corn grit clusters—an element wholly lacking in the present claims. Applicants respectfully submit that the claims of application no. 09/739,450 and the present application are thereby patently distinct and that the double patenting rejection over application no. 09/739,450 should be withdrawn.



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A terminal disclaimer is enclosed for the present application to overcome the provisional obviousness double patenting rejection based on application no. 09/487,036.

**3. § 112 Rejection**

Claim 54 was rejected under 35 U.S.C. § 112 1<sup>st</sup> and 2<sup>nd</sup> paragraphs as being unsupported by the specification and further as being indefinite. The specification is clear, however, that the methods of the present invention may "be performed during ... tempering of oats or corn...." See original application at page 9, lines 19-21. Applicants respectfully request that the § 112 rejections be withdrawn.

**3. § 103 Rejections**

Claims 1-57 were rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 5,997,917 to Uchida et al. (Uchida), or U.S. Patent No. 6,284,299 to Morello et al. (Morello) or U.S. Patent No. 2,829,054 to Feinstone (Feinstone). These rejections are traversed for the following reasons and for other reasons that will be apparent.

*a. Morello should be removed as a reference*

While Morello may constitute prior art under 35 U.S.C. § 102(e), Morello does not qualify as prior art under 35 U.S.C. § 103. The Morello patent and the present application were commonly owned at the time the present invention was made. In accordance with 35 U.S.C. § 103(c) and MPEP § 706.02(l)(1), Attorney for Applicants hereby states that U.S. Patent Application 09/739,857 (the present invention) and U.S. Patent No. 6,284,299 to Morello et al., were, at the time the present invention was made, owned by The Quaker Oats Company. The assignment of the present invention may be verified at the U.S.P.T.O Assignment Division at Reel/Frame 011754/0234. Copy attached as Exh. 1. Applicants therefore respectfully submit that Morello be disqualified as prior art under 35 U.S.C. § 103(c) and all rejections based on Morello be withdrawn.



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*b. The present claims are patentable over Uchida*

Independent product claim 1 recites a product having added water soluble or water dispersible material absorbed into the food. Moreover, Uchida does not teach or suggest a water soluble or water dispersible material absorbed into oat groats or corn grit as recited in the present claims. Uchida discloses a protein coated oat grain having decreased viscosity when dispersed in water. Uchida, col. 1 lines 65-67. A protein solution "contacts" the surface of the oat grain. This contact "cover[s]" the oat with "gelled" protein. Uchida, col. 4 lines 16-23. Nowhere does Uchida disclose that the protein is absorbed, infused or otherwise taken up by the oat. The fact that 1) the protein is gelled, 2) this gelled protein prevents elution of viscous materials from the oats, and 3) Uchida provides no teaching that the protein solution does anything more than "contact" the oat. Uchida does not teach or suggest absorbing the recited material into the body of the oat groat or corn grit as claimed.

*c. The present claims are patentable over Uchida in view of Feinstone*

Feinstone does not supply the deficiencies of Uchida. Feinstone is directed to forming a coating on rice grains. Feinstone at col. 2, lines 4-19. Feinstone does not teach or suggest a material absorbed into, uncooked oat groats/corn grit as recited in the present claims. Feinstone teaches applying an aqueous CMC dispersion including vitamins and minerals onto the surface of rice grains. The insoluble CMC forms a "film" which "adheres tenaciously" to the grain when dried. Feinstone, col. 3 lines 60-65. The vitamins and other nutrients are bound to the grain surface by the dried CMC, which acts as a glue or adhesive. Feinstone, col. 2 lines 30-40. Thus, the vitamins are contained in the CMC, which adheres to the grain surface. Consequently, Feinstone has no disclosure whatsoever that the vitamins and other nutrients are absorbed into the body of the rice. In fact, Feinstone teaches away from the absorption of the vitamins and other nutrients into the rice as a thorough wetting of the rice is to be avoided. Feinstone, col. 5 lines 65-71. Whereas in accordance with the present invention, wetting is necessary for the absorption process. See original application at page 6, line 29 through page 7, line 3.

Even if some material would be inherently absorbed into the oat groat of Uchida or rice of Morello, there is no teaching or suggestion that such absorption is



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known. An obviousness rejection cannot be predicated on that which is not known. Rather, an obviousness rejection must be predicated on that which is known.

Combining the references fails to supply the deficiencies of either reference. Uchida fails to teach or suggest that the protein is absorbed into the oat. Feinstone likewise fails to teach or suggest that the vitamins are absorbed into the grain. Thus, combining the teachings of Uchida and Feinstone cannot teach or suggest absorption of water soluble or water dispersible added material into oat groat and/or corn grit as recited in the claims.

*d. The method claims are patentable over the prior art*

Uchida has no teaching or suggestion of contacting oat groat and/or corn grit with an infusion mixture to cause absorption or adsorption of the mixture in combination with tempering the grain as recited in method claims 17 and 35 and claims dependent therefrom. Uchida merely discloses that the aqueous protein solution may be applied before, during or after the steaming. Uchida, col. 4 lines 3-9. Nor does Feinstone supply the deficiencies of Uchida. Feinstone does not teach or remotely suggest tempering the grain in the process of coating the grain as recited in process claims 17 and 35. Feinstone merely discloses that the rice may be parboiled. Feinstone col. 1 lines 40-45. Neither Uchida nor Feinstone teaches or suggests the use of water as a vehicle to cause infusion of the desired materials into the body of the grain (absorption) or onto the surface of the grain (adsorption) as claimed. The method claims are unobvious and should be allowed.

### **CONCLUSION**

In conclusion, it is respectfully submitted that pending claims 1-4, 6, 7, 17-18, 20-30, 32-33, 35-36, 38-41, 43, 44, 46-57 and new claims 58-59 are nonobvious and patentable. An early indication of allowance is solicited.



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Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**"

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Claims 9-12 and 14-15 have been cancelled.

The claims have been amended as follows.

1. (Twice amended) An uncooked food product consisting essentially of a food selected from the group consisting of uncooked oat groats, uncooked corn grit and mixtures thereof, and added material absorbed into the food, said material being water soluble or water dispersible and selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the food product.

17. (Twice amended) A method of incorporating at least one water soluble or water dispersible ingredient into the body of food selected from the group consisting of uncooked oat groats and uncooked corn grit, comprising:

(a) tempering the food:

(b) [(a)] contacting the food with an aqueous infusion mixture of water and the ingredient [selected from the group consisting of uncooked oat groats, uncooked corn grit and mixtures thereof, and added material absorbed into the food, said material selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the food product] for a time and in an amount and ingredient concentration effective to increase the moisture content of the food by from about 1% to about 35% by weight of the food to absorb the ingredient; and

(c) [(b)] optionally equilibrating the contacted food with the aqueous

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Infusion mixture for a sufficient amount of time to cause further absorption of the ingredient by the food.

35. (Twice amended) A method of adding at least one non-water soluble ingredient to uncooked oat groats so such ingredient becomes adsorbed onto at least a portion of the surface of the uncooked oat groats, the method comprising:

(a) tempering the oat groats:

(b) [(a)] [prior to flaking the oat groats] contacting the surface of the uncooked oat groats with an aqueous mixture containing the non-water soluble ingredient [selected from the group consisting of vitamins, minerals, nutrients selected from Echinacea extract, ginkgo, ginseng, bee pollen, lecithin, St. John's wort extract and mixtures thereof, spices, flavors and combinations thereof present in an amount of from about 0.0001% to about 2.0% on a dry weight basis of the oat groats] for a time and in an amount and ingredient concentration effective to increase the moisture content of the uncooked oat groats by from about 1% to about 35% and to cause adsorption of the ingredient; and [thereafter]

(c) [(b)] optionally equilibrating the uncooked oat groats with the aqueous mixture for a sufficient amount of time to cause further adsorption of the ingredient onto at least a portion of the surface of the oat groats.

54. (Amended) The method of claim 17 wherein said contacting and said tempering occur simultaneously [occurs during tempering of said food].

56. (Amended) The method of claim 35 wherein said contacting and said tempering occur simultaneously [occurs during tempering of said food].

New claims have been added as follows.

-58. The method of claim 17 wherein said contacting occurs prior to said

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tempering.

59. The method of claim 35 wherein said contacting occurs prior to said tempering.--

